90-1183

Supreme Court, U.S.
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Number

**IN THE
SUPREME COURT
OF THE
UNITED STATES**

October Term, 19__

NATHAN BOATNER

Petitioner

vs.

UNITED STATES OF AMERICA,
FREDERICK C NIELSEN, ROSEMARY BOWEN, AND
DOES ONE THROUGH TWENTY FIVE INCLUSIVE

Respondents

On A Writ Of Certiorairi
To The
United States Court Of Appeals
For The Ninth Circuit

Petition For Certiorari--Civil Rights

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Pro Se

Preliminary Matter

Questions presented

1) Should a party be pemitted to file an amended complaint when no responsive pleading was filed in the District Court and the party alleges that there is a factual basis for a claim for which relief can be granted.

The District Court ruled No. This is affirmed by the Court Of Appeals. All case law, however, holds this to be error. **Nolen v Fitzharris** 450 F.2d 958 (CA9, 1971)

2) Does an IRS agent have unlimited, unchecked, absolute power over the economic affairs of a taxpayer so that a United States taxpayer has no legal defense to any act of an agent of the IRS however, egregious.

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The District Court ruled yes. Affirmed by the Court Of Appeals. The Supreme Court has not specifically answered this question in its decisions. **Bothke v Flour** 713 F.2d 1405 (CA9, 1983) the opinion of which was summarily vacated without explanation at 468 U.S. 1201, 104 S.Ct. 3566, 82 L.Ed.2d 867.

3) Is there a basis for an attorney at law to recover attorney's fees as costs from the sovereign if a suit against the sovereign is successful even if the suit is based on alleged wrongful acts of an agent of the IRS.

The Courts have not clearly answered this question.

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Parties

The parties to this petition are listed in the caption of this case.

Contents

Questions Presented . . i

Parties . . iii

Contents . . iii

Authorities . . vi

Petition For Certiorari--

Civil Rights . . 1

Decisions Below . . 2

Jurisdiction . . 2

Constitutional Provision And

Statutes Involved . . 2

Statement . . 3

Reasons For Granting The Writ . 9

Summary Of The Argument . 12

Argument . . 14

/

/

/

/

Point 1

A Party Should Be Able To File An Amended Complaint As A Matter Of Right If No Responsive Pleading Has Been Filed 13

Point 2

A Claim For Relief Based On Bad Faith Can Be Stated Against The United States Pursuant To 26 U.S.C. 7433 Or In The Alternative 42 U.S.C. 1983 When The Bad Faith Rises To The Level Of Constitutional Denial Of Due Process 24

Point 3

A Party Should Be Able To Recover Reasonable Attorney;s Fees From The United States If Successful In A Suit Against An IRS Agent Or Based On Actions Of An IRS Agent . 34

Conclusion . . 24

APPENDIX

	Page
Appendix . .	26
Court Of Appeals Decision .	27
United States Constitution	
Amendment V . .	34
26 U.S.C. 6532 . .	35
26 U.S.C. 7422 . .	37
26 U.S.C. 7430 . .	43
26 U.S.C. 7433 . .	54
28 U.S.C. 2412 . .	57
42 U.S.C. 1983 . .	60

AUTHORITIES Page

Cases:

Bothke v Flour
713 F.2d 1405 (1983) ii,10,11

Butz v Economou
438 U.S. 478 (1978) . 20

GM Leasing v United States
429 U.S. 338 (1977) . 21

Life Science v IRS
525 F.Supp. 399 (a981) . 20

Nolen v Fitzharris
450 F.2d 958 (1971) . i,9,14

Orloaff v Cleveland
708 F.2d 372 (1983) . 17

Parratt v Taylor
451 U.S. 527 . 17

Starbuck v City and County
556 F.2d 450 (1977) . 19,20

United States v McPherson
840 F.2d 244 (1988) . 23

Statutes, Rules:

26 U.S.C. 7430 . 23

26 U.S.C. 7433 15,22

28 U.S.C. 1254(1) . 2

28 U.S.C. 1257(3) . 10,11

42 U.S.C. 1983 . 15,22

Rule 12, F.R.Civ.P. . 3

Rule 10, Supreme Court 12

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Decisions Below

On September 25, 1989, the District Court for the Central District Of California dismissed the complaint in this case with prejudice in a decision that was not reported. (R 147) The judgment of the Court Of Appeals for the Ninth Circuit was filed and entered September 6, 1990, and is not reported.

Jurisdiction

The judgment of the Court Of Appeals For The Ninth Circuit was made and entered on September 6, 1990 and a copy thereof is appended to this petition in the Appendix. Rehearing was not sought. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1)

Constitutional Provision And Statutes Involved

1) The Fifth Amendment to the United States Constitution and

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2) The following statutes 26 U.S.C. Sec. 6532; 26 U.S.C. Sec. 7422; 26 U.S.C. Sec. 7430; 26 U.S.C. Sec. 7433; 28 U.S.C. Sec. 2412; and 42 U.S.C. Sec. 1983.

All of the above are included verbatim in the appendix to this petition.

Statement

On May 15, 1989, your plaintiff filed a complaint against the United States and two employees of the Internal Revenue Service. (R 14) On July 10, 1989, the defendants filed a notice of motion and memorandum for dismissal of the complaint pursuant to Rule 12(b)(1), Rule 12(b)(2), and Rule 12 (b)(6) of the F.R.Civ.P. (R 81) Your plaintiff filed a memorandum in oppositon to the motion for dismissal on August 23, 1989. (R 110) Defendants filed reply papers on September 6, 1989. (R 133) After hearing on September 11, 1989, the Court

dismissed the complaint with prejudice and an order was filed September 26, 1989. (R 142) A notice of appeal was timely filed on October 6, 1989. (R 145)

After appeal to the Circuit Court the decision of the trial Court was in all respects, affirmed in a Memorandum Decision. A copy of the decision is appended hereto.

The complaint alleges that District Director Frederick Nielsen has contrived an artifice or scheme to obtain payment of additional taxes from United States citizens without regard for whether the taxpayer actually owes any additional taxes or not. (R 19)

This artifice or scheme involves (1) establishing of a quota of at least $2,500 additional taxes per audit for each IRS agent (R 19); making such burdensome, oppressive, and costly demands on the taxpayer without any

substantial justification so that the taxpayer would gladly pay the IRS additional taxes just to avoid the burdensome and oppressive demands of the IRS agent (R 19 to 20); and to otherwise harass the taxpayer so that additional taxes could be collected whether actually owed the United States or not. (R 19, et esq)

In furtherance of the artifice or scheme of the District Director agent Rosemary Bowen (1) disallowed substantial expenses of your plaintiff without any known reason or explanation; (2) the subsequent protest to the IRS and the internal appeal at the IRS was totally ignored by the IRS; (3 sent a 90 day letter claiming unpaid taxes that automatically would go to a lien against your plaintiff; and (4) noticed another audit for another two years under the same conditions with considerably more

oppressive and burdensome demands for evidence production to your plaintiff so as to result in the total financial ruin of your plaintiff without any factual or any legal basis, and without any explanation to your plaintiff. (R 23 to 24)

In the memorandum in oppostion to the motion to dismiss the complaint, your plaintiff admits that the complaint is not well pleaded and that the complaint is largely based on an error of law as to running of the statute of limitations on the claim of the IRS. (R 110) However, your plaintiff asked the Court for leave to amend (R 110, et seq)

In the opposition memorandum it was set forth in detail that agent Rosemary Bowen is making a clearly false and fraudulent claim against your plaintiff for the 1985 tax year (R 116) For one thing she claims the tax return was not

timely filed but the tax return for 1985 (Exhibit 11, R 125) was filed timely pursuant to an automatic extension of time to file (R 123)(Exhibit 10) (R 118) This caused your plaintiff to have to pay the IRS $8,939 on or about August 17, 1989 (R 118) (Exhibit 15)

It is further explained that the IRS representatives have yet to even offer to explain to your plaintiff why all of this is being done by the IRS and why your plaintiff is forced to pay at least $8,939 to the IRS none of which is actually owed. (R 116) And that this is just the tip of the iceberg of what the IRS is doing to myself, your plaintiff. (R 116 to 117) At the hearing on the motion to dismiss your plaintiff argued to the Court that it is the policy in the 9th Circuit that when the Court dismisses a complaint pursuant to Rule 12, F.R.Civ.P. the dismissal should be

without prejudice. (R 8) Your plaintiff argued that the United States has all along acted in the most abject bad faith (R 10) the IRS agent totally fabricated the claim for taxes due for 1985 (R 10), and clearly the complaint can be amended to state a cause of action against the defendants (R 11).

The attorney for the United States argued that the complaint should be dismissed with prejudice and that sanctions should be imposed on your plaintiff for filing the suit. (R 10 to 11)

The principal argument of the defendants seems to be that an agent of the IRS should be permitted to do anything necessary to force a taxpayer such as your plaintiff to pay large additional amounts to the IRS dependant only on the amount demanded by the IRS agent, regardless of the facts and

applicable law; and that your plaintiff should be denied access to the District Court and should be denied any explanation whatsoever by the IRS and the United States. And that your plaintiff should be sanctioned for believing that there is anything wrong with being defrauded by the agent with the fraudulent claim for at least $8,939 in unpaid taxes; and that the agent or someone should at least give your plaintiff an explanation of the basis of the agent's claim; and certainly your plaintiff is not entitled to any meaningful hearing on the claim for relief (R 11 to 12)

Reasons For Granting The Writ

1) In **Nolen v Fitzharris** 450 F.2d 958 (CA9, 1971) the Circuit Court held that a party may amend a pleading as a matter of right at any time before a responsive pleading is served and a

motion to dismiss is not a responsive pleading within the meaning of the Federal Rules Of Civil Procedure. In the present case the District Court dismissed the complaint without leave to amend prior to a responsive pleading being filed at complete variance with all known case law. There is no known Supreme Court case on this issue, so that the Court may grant the writ to review this matter pursuant to Supreme Court Rule 10(1)(a) or pursuant to the provisions of 28 U.S.C. 1257(3).

2) The Supreme Court has not decided what legal rights, defenses, or the like, if any, can be invoked by an aggrieved taxpayer in defense to alleged egregious, perphaps completely uncivilized behavior of an IRS agent. In **Bothke v Flour** 713 F.2d1405 (CA9, 1983) the Circuit Court For The Ninth Circuit set forth guidelines for behavior of any government

agent, even an agent of the IRS, and the Supreme Court summarily vacated the decision in **Bothke** at 468 U.S. 1201, 104 S.Ct. 3566, 82 L.Ed.2d 867 so there are no legal guidelines for using the legal system to defend against completely uncivilized behavior of an IRS agent. This may be an important question of federal law that the Supreme Court could clarify for the taxpayers of the United States at this time pursuant to Rule 10(1)(c) of the Supreme Court and 28 U.S.C. 1257(3)

3) The conditions under which a party may, if at all, recover reasonable attorney's fees if successful in litigation with the United States involving behavior of an IRS agent is not clear in that no one really knows what legal defense, if any, is available against uncivilized behavior of an IRS agent, so it is not possible to determine

what law is applicable to this question or issue so the Court may grant the writ on this issue again pursuant to the provisions of Rule 10(1)(c) and 28 U.S.C. 1257(3)

Summary Of The Argument

If the dictionary definition of a slave being that a slave is one completely under the dominance of another is true then all of the taxpayers of the United States are slaves of each and every agent of the IRS at the present time because of congressional fiat and lack of any case authority to the contrary. Since the most uncivilized behavior of an IRS agent is also the most cost effective behavior assuming that the taxpayer does not do anything to defend against the uncivilized behavior of an IRS agent, the present well known trend for IRS agents to behave in a more and more uncivilized manner can only be expected to continue, even

accelerate unless this Court at least theoretically prohibits certain specific uncivilized behavior of IRS agents.

The facts of this case present to the Court proof of all the well known political maxims such as "you cannot legislate morality" and "absolute power corrupts absolutely" and the like.

The behavior of the IRS agent in the present case is so uncivilized and egregious that the agent is practically begging this Court to proscribe such behavior in order to promote the concept that our society is at least civilized.

In the present matter this Court is being asked to rule at least that an IRS agent must at the very least explain the factual basis and the applicable legal basis for depriving a taxpayer of his or her property in order to comply with Constitutional due process and good faith requirements. This might seem to be an illusory request in that a

false claim for additional taxes could easily be based on a false premise. However, the alternative is to give absolute dominion and power to an IRS agent over the economic affairs of every United States taxpayer, and it is submitted that this would be indeed a dangerous precedent for this Court to set.

It is submitted that we cannot live in a civilized country where one class of persons such as IRS agents have absolute dominion and power over another class of persons, the taxpayers of the Untied States.

Argument

Point 1

A Party Should Be Able To File An Amended Complaint As A Matter Of Right If No Responsive Pleading Has Been Filed

There is no known Supreme Court case dealing with this issue, but in **Nolen v Fitzharris** 450 F2d. 958 (CA9, 1971) it

was held that a party does indeed have a right to amend the complaint once prior to a responsive pleading being filed. This appears to be good law but in the present case the District Court dismissed the complaint without leave to amend prior to any responsive pleading being filed. Perphaps the Supreme Court will rule on this issue.

Point 2

A Claim For Relief Based On Bad Faith Can Be Stated Against The United States Pursuant To 26 U.S.C. 74 Or In The Alternative 42 U.S.C. 1983 When The Bad Faith Rises To The Level Of Constitutional Denial Of Due Process

New 26 USC 7433 states in pertinent part:

> If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue

> Service recklessly or intentionally disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

As an issue of first impression your plaintiff submits that any employee of the Internal Revenue Service who violates fundamental principles of due process of law in the assessment and collection of taxes by such conduct comes within the meaning of this statute which proscribes actions that "recklessly or intentionally disregard the law". It is further submitted that so called actions in bad faith could well be actions that deprive the taxpayer of any semblance of due process of law within the meaning of 26 U.S.C. 7433. Using California Insurance Code Section 790.03(h) as a

guide your plaintiff submits that a cause of action may be stated pursuant to 26 USC 7433 for any or the following acts:

Failure of an employee of the IRS to provide promptly a reasonable explanation of the basis relied on, in relation to the facts or applicable law, for a claim for tax deficiency.

It is well known that after an audit the agent may assess a tax deficiency which automatically becomes a lien. Unless the agent will at least explain the basis for the assessment the taxpayer has no meaningful opportunity to be heard before the property of that taxpayer has been taken away by the sovereign. This has repeatedly been held to deprive a person of due process of law. **Parratt v Taylor** 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420.

In **Orloff v Cleveland** 708 F.2d 372 (CA9, 1983) the court held that due

process is a flexible concept and its procedural requirements vary depending on the paticular deprivation. Thus, there is no reason why certain actions held to be bad faith cannot also be actions that deprive one of due process of law under the circumstances.

Because every section of the Internal Revenue Code is subsidiary to the provisions of the United States Constitution and to requirements of due process of law, your platintiff submits that if an agent willfully refuses to explain the basis for a claim for a tax deficiency before the claim becomes an automatic lien this gives rise to a claim for bad faith based on due process considerations. Clearly if, as is alleged to have occurred in this case, the agent makes a claim for a tax deficiency then refuses to discuss the claim or explain the basis, if any, for

the claim against the taxpayer, then the taxpayer has no opportunity to correct the situation or possibly compromise the claim with the agent. Clearly this deprives the taxpayer of any hearing on the matter before the property of the taxpayer is taken away, and deprives the person of due process.

In **Starbuck v City and County of San Francisco** 556 F.2d 450 (CA9, ND CA, 1977) the Court held that an employee of the sovereign loses any qualified immunity from suit when the employee substantially departs from authority conferred upon the employee by law.

In the present case it is alleged agent Rosemary Bowen made a completely false and fraudulent claim for unpaid taxes against your plaintiff for the tax year 1985. Clearly this means she can be sued as an individual for this claim. To be sure, it may later be found that the

agent acted within the scope of her employment and would at least have qualified immunity from suit, but that is not presently the issue. The only issue is whether a complaint can be filed against the agent for fraud and other civil torts based on conduct not authorized by statute. According to **Starbuck** this would be perfectly proper.

In **Life Science v IRS** 525 F.Supp. 399 (ND CA, 1981) it was held that if IRS agents act in violation of their statutorily defined duties, not pursuant to them, a suit against the agent is not barred by the doctrine of soverign immunity.

In **Butz v Economou** 438 U.S.. 478, 57 L.Ed.2d 895, 98 S.Ct. 2894 (1978) this Court held that federal officials have no greater immunity from suit than state officialy under 42 U.S.C. 1983. The Court held that government officials may

be entitled to qualified immunity from suit, but not absolute immunity unless absolute immunity is essential to performance of the official's duties.

In **GM Leasing v United States** 429 U.S. 338, 50 L.Ed.2d 530, 97 S.Ct. 619 (1977) this Court held that even IRS agents must act with some modicum of good faith, but specific behavior was not set forth in this case illustrative of good or bad faith.

Uncivilized behavior takes many shapes and forms, but to take away the property of a person without at the least any explanation is clearly not civilized behavior even if the person taking away the property of another acts under color of sovereign authority. Clearly if a taxpayer can be legally deprived of his or her property by an IRS agent without being informed of the applicable factual reason for the deprivation and the legal

basis for the deprivation the taxpayer is de facto absolutely under the dominion and power of the IRS agent and according to the dictionary is de facto the slave of the agent.

Thus this Court is being asked to decide that if an agent of the IRS does not give a taxpayer a factual reason for depriving the taxpayer of his or her property and does not explain the applicable law to the taxpayer, then the taxpayer is denied Constitutional due process of law and may maintain a legal action against the IRS agent as an individual pursuant to either 26 U.S.C. 7433 or 42 U.S.C. 1983. It is not possible to imagine a more basic issue or how less than this can be even a modicum of good faith and even a modicum of due process.

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Point 3

A Party Should Be Able To Recover Reasonable Attorney's Fees From The United States If Successful In A Suit Against An IRS Agent Or Based On Actions Of An IRS Agent

26 U.S.C. 7430 authorizes recovery of attorney's fees from the prevailing party if successful in a suit against the IRS. However, there are cases such as **United States v McPherson** 840 F.2d 244, 245, (CA4, 1988) that hold that a party who prosecutes an action pro se cannot recover reasonable attorney's fees. This seems to be bad law in that usually at least 50% of an attorney's fees are ordinarily paid out by the attorney as expenses. Denial of the recovery of attorney's fees, then to an attorney prosecuting an action pro se is to in effect sanction the attorney for trying to set a desirable precedent in our

society and to set up legal defenses to demonstrated wrongful behavior. It is submitted that if a party, even the sovereign, behaves wrongfully and does not prevail in the matter in Court then the party should have to pay reasonable attorney's fees to the prevailing party even if that party is also an attorney on the ground that the wrongful behavior damaged the prevailing party for costs of legal services and for loss of time that could be spent on business of a client. To rule otherwise would be to permit the sovereign to benefit from its own wrong.

Conclusion

Premises considered it is prayed that the Court will grant this petition for certiorari on the ground that the time has come for this Court to decide whether the Fifth Amendment is applicable to uncivilized actions of an IRS agent and to define for us at least one or more

such uncivilized actions that the United States taxpayers have Fifth Amendment protection from, and to decide how a taxpayer may procedurally file a claim for relief based on allegations of uncivilized actions of an agent of the IRS.

Respectfully submitted.

DATED: JAN 18 1991

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Appendix

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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NATHAN BOATNER	)	FILED
	)	SEP 6 1990
Plaintiff-Appellant,	)	No. 89-56172
vs.	)	D.C.No. CV-89-2900-DT
UNITED STATES OF AMERICA, et al.,	)	MEMORANDUM*
Defendants-Appellees.	)	

Appeal From The United States District Court For The Central District Of California Dickran Tevrizian, District Judge, Presiding
Submitted August 20, 1990**

Before: TANG, ALARCON, and WIGGINS, Circuit Judges

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for disposition without oral argument. Therefore Boatner's request for oral argument is denied. Fed. R. App. P. 34(a); 9th Cir. R. 34-4

Nathan Boatner appeals pro se the district court's order dismissing his action for lack of subject matter jurisdiction, personal jurisdiction, and failure to state a claim upon which relief can be granted.[1/] The district court found that Boatner failed to exhaust his administrative remedies prior to filing his complaint, and that it was deprived of jurisdiction by sovereign immunity which also made it impossible for Boatner to state a claim upon which relief courld be granted. Boatner contends that the court erred in denying him leave to amend his complaint. We have jurisdiction pursuant to 28 U.S.C. Sec. 1291. We affirm.

We review de novo the dismissal of a complaint for lack of subject matter jurisdiction under Fed. R. Civ. P.

1/ Although Boatner appeals pro se, he is a licensed, practicing attorney.

12(b)(1), for failure to state a claim pursuant to F. R. Civ. P. 12(b)(6), **Kruso v. International Tel. & Tel. Co.**, 872 F.2d 1416, 1421 (9th Cir. 1989), cert. denied 110 S. Ct. 3217 (1990), or for lack of personal jurisdiction under Fed. R. Civ. P. 12(b)(2) **Brainerd v Governors of the Univ. of Alberta**, 873 F.2d 1257, 1258 (9th Cir. 1989). The district court's factual findings on jurisdictional issues must be accepted unless clearly erroneous. **Stock West, Inc. v. Confederated Tribes of the Colville Reservation**, 873 F.2d 1221, 1225 (9th Cir. 1989)

We review the district court's refusal to allow Boatner to amend his complaint under the abuse of discretion standard. See **Thomas-Larear v FBI**, 851 F.2d 1202, 1206 (9th Cir. 1988).

Dismissal with prejudice is warranted where the pleadings before the

court demonstrate that a plaintiff would not be entitled to relief under any set of facts. **Rutman Wine Co v E. & J. Gallo Winery**, 829 F.2d 729, 732 (9th Cir. 1987)

In May, 1989, Boatner filed suit against the United States, IRS agent Rosemary Bowen, IRS district director Frederick Neilson, and DOES 1-25. Boatner alleged that the IRS has established a scheme to obtain additional taxes whereby each agent fulfills a quota by assessing a deficiency of $3,500 per audited account, regardless of whether that amount is actually owed by the taxpayer. Boatner asserts that in furtherance of this scheme, the IRS audited him, disallowed substantial expenses, and ignored his subsequent protest and appeal. Boatner concedes that his existing claim against the IRS is barred by the doctrine of sovereign immunity, but asserts that he will state

a proper cause of action under 26 U.S.C. Sec 7433 if permitted to amend his complaint.

A. Sovereign Immunity

It is settled law that the United States, as a sovereign entity, may not be sued without its consent, and that the terms of that consent define the courts' jurisdiction. **Lehman v Nakshian**, 453 U.S. 156, 160 (1981); **Hutchinson v United States**, 677 F.2d 1322, 1327 (9th Cir. 1982). The Federal Tort Claims Act (FTCA), provides a limited waiver of sovereign immunity and permits recovery against the United States for tortious conduct by federal employees that occurs within the scope of their employment. See generally 28 U.S.C. Sec. 2671-80. Prior to commencing an FTCA action in federal court a plaintiff must present a claim to the appropriate agency. Id. at Sec. 2675(a). If the agency denies or

fails to decide the claim within six months, the plaintiff is free to file a federal action. Id. Boatner filed a FTCA claim with the IRS which was rejected by the agency on the ground that the FTCA does not waive sovereign immunity for claims arising out of the assessment or collection of taxes. See 28. U.S.C. Sec. 2680(c) see also **Hutchinson** 677 F.2d at 1327. The district court correctly determined that because Boatner's claims arose out of the assessment and collection of taxes, sovereign immunity was not waived and therefore it lacked subject matter jurisdiction over his FTCA claim. See 28 U.S.C. Sec 2680(c).

The district court was also correct in holding that it lacked jurisdiction over the two individual IRS agents. The bar of sovereign immunity extends to agents and officers of the United States where they are sued in their official

capacities for actions within the scope of their employment. **Hawaii v Gordon** 373 U.S. 57, 58 (1963); **Hutchinson**, 677 F.2d at 1327. Boatner specifically stated in his complaint that the defendants were the agents and employees of their codefendants and acting within the course and scope of their employment. Therefore, they were protected by sovereign immunity, and dismissal as to them was proper. See id.

B. Lack of Personal Jurisdiction and Failure to State a Claim

Because the district court properly dismissed this action for lack of subject matter jurisdiction, there is no authority to decide the other issues. 2/

Dismissal was proper because the district court lacked subject matter jurisdiction over Boatner's action.

AFFIRMED.

UNITED STATES CONSTITUTION

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment or a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

26 U.S.C. Sec. 6532

(a) Suits by Taxpayers for Refund--

(1) General rule.--No suit or proceeding under Section 7422(a) for the recovery of any internal revenue tax, penalty, or other sum, shall be begun before the expiration of 6 months from the date of filing the claim required under such section unless the Secretary renders a decision thereon within that time, nor after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates.

(2) Extension of time.--The 2-year period prescribed in paragraph (1) shall be extended for such period as may be agreed upon in writing between the taxpayer and the Secretary.

(3) Waiver of notice of disallowance--If any person files a written waiver of the requirement that he be mailed a notice of disallowance, the 2-year period prescribed in paragraph (1) shall begin on the date such waiver is filed.

(4) Reconsideration after mailing of notice--any consideration, reconsideration or action by the Secretary with respect to such claim following the mailing of a notice by certified mail or registered mail of disallowance shall not operate to extend the period within which suit may be begun.

26 U.S.C. Sec. 7422

(a) No suit prior to filing claim for refund.--No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

(b) Protest or duress--Such suit or proceeding may be maintained whether or not such tax, penalty, or sum has been paid under protest or duress.

(c) Suits against collection officer a bar--A suit against any officer or employee of the United States (or

former officer or employee) or his personal representative for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected shall be treated as if the United States had been a party to such suit in applying the doctrine or res judicata in all suits in respect of any internal revenue tax, and in all proceedings in the Tax Court and on review of decisions of the Tax Court.

(d) Credit treated as payment--The credit of an overpayment of any tax in satisfaction of any tax liability shall, for the purpose of any suit for refund of such tax liability so satisfied, be deeded to be a payment in respect of such tax liability at the time

such credit is allowed.

(e) Stay of proceedings--If the Secretary prior to the hearing of a suit brought by a taxpayer in a district court or the United States Claims Court for the recovery of any income tax, estate tax, gift tax, or tax imposed by chapter 41, 42, 43, or 44 (or any penalty relating to such taxes) mails to the taxpayer a notice that a deficiency has been determined in respect of the tax which is the subject matter of taxpayer's suit, the proceedings in taxpayer's suit shall be stayed during the period of time in which the taxpayer files a petition with the Tax Court for a redetermination of the asserted definiency, and for 60 days thereafter. If the taxpayer files a peitiion with the Tax Court, the district court or the United States Claims Court, as the case may be, shall lose jurisdiciton of taxpayer's suit to

whatever extent jurisdiction is acquired by the Tax Court of the subject matter of taxpayer's suit for refund. If the taxpayer does not file a petition with the Tax Court for a redetermination of the asserted deficiency, the United States may counterclaim in the taxpayer's suit, or intervene in the event of a suit as described in subsection (c) (relating to suits against officers or employees of the United States), within the period of the stay of proceedings notwithstanding that the time for such pleading may have otherwise expired. The taxpayer shall have the burden of proof with respect to the issued raised by such counterclaim or intervention of the United States except as to the issue of whether the taxpayer has been guilty of fraud with intent to evade tax. This subsection shall not apply to a suit by a taxpayer which, prior to the date of enactment of this

title, is commenced, instituted, or pending in a district court or the United States Claims Court for the recovery of any income tax, estate tax, or gift tax for any penalty relating to such taxes.)

(f) Limitation on right of action for refund--

(1) General Rule--A suit or proceeding referred to in subsection (a) may be maintained only against the United States and not against any oficer or employee of the United States (or former officer or employee) or his personal representative. Such suit or proceeding may be maintained against the United States notwithstanding the provisions of section 2502 of title 28 of the united States Code (relating to aliens' privilege to sue) and notwithstanding the provisions of section 1502 of such title 28 (relating to certian treaty cases).

(2) Misjoinder and change of venue--If a suit or proceeding brought in a

United States district court against an officer or employee of the United States (or former officer or employee) or his personal representative is improperly brought solely by virtue of paragraph (1), the court shall order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party for such officer or employee as of the time such action commenced, upon proper service of process on the united States. Such suit or proceeding shall upon request by the United States be transferred to the district or division where it should have been brought if such action initially had been brought against the Untied States.

26 U.S.C. Sec 7430

(a) In General-- In any administrative or court proceeding which is brought by or against the United States in connection with the determination, collection, or refund of any tax, interest, or penalty under this title, the prevailing party may be awarded a judgment or a settlement for --

(1) reasonable administrative costs incurred in connection with such administrative proceeding within the Internal Revenue Service, and

(2) reasonable litigation costs incurred in connection with such proceeding.

(b) Limitations--

(1) Requirement that administrative remedies be exhausted--A judgment for reasonable litigation costs shall not be awarded under subsection (a) in any court proceeding unless the court determines

that the prevailing party has exhausted the administrative remedies available to such party within the internal Revenue Service.

(2) Only costs allocable to the Untied States--An award under subsection (a) shall be made only for reasonable litigation and administrative costs which are allocable to the United States and not to any other party.

(3) Exclusion of declaratory Judgment proceedings--

(A) In general--No award for reasonable litigation costs may be made under subsection (a) with respect to any declaratory judgment proceeding.

(B) Exception for section 501(c)(3) determination revocation proceedings--Subparagraph (a) shall not apply to any proceeding which involves the revocation of a determination that the organization is described in section 501(c)(3).

(4) Costs denied where party prevailing protracts proceedings--No award for reasonable litigation and administrative costs may be made under subsectiuon (a) with respect to any portion of the administrative or court proceeding during which the prevailing party has unreasonably protracted such proceeding.

(c) Definitions--For purposes of this section--

)1) Reasonable litigation costs.--The term "reasonable litigation costs" includes--

(A) reasonable court costs. and

(b) based upon prevailing market rates for the kind or quality of services furnished--

(i) the reasonable expenses of expert witnesses inconnection with a court proceeding, except that no expert witness shall be compensated at a rate in

excess or the highest rate of compensation for expert witnesses paid by the United States,

(ii) the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and

(iii) reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that such fees shall not be in excess of $75 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for such proceeding, justifies a higher rate.

(2) Reasonable administrative costs--The term "reasonable administrative costs" means--

/

(A) any administrative fees or similar charges imposed by the Internal Revenue Service, and

(B) expenses, costs, and fees described in paragraph (1)(B), except that any determination made by the ocurt under clause (ii) and (iii) thereof shall be made by the Internal Revenue Service in cases where the determination under paragraph (4)(B) of the awarding of reasonable administrative costs is made by the Internal Revenue Service.

Such term shall only include costs incurred on or after the earlier of (i) the date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals or (ii) the date of the notice of deficiency.

(3) Attorney's fees--For purposes of paragraphs (1) and (2), fees for the services of an individual (whether or not

an attorney) who is authorized to practice before the Tax Court or before the Internal Revenue Service shall be treated as fees for the services of an attorney.

(4) Prevailing party--

(A) In general--The term "prevailing party" means any party in any proceeding to which subsection (a) applies (other than the United States or any creditor of the taxpayer involved)--

(i) which establishes that the position of the United States in the civil proceeding was not substantially justified,

(ii) which--

(I) has substantially prevailed with respect to the amount in controversy, or

(II) has substantially prevailed with respect to the most significant issue or set of issues presented, and

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(iii) which meets the requirements of the 1st sentence of section 2412(d)(1)(B) of title 28 United States Code (as in effect on October 22, 1986) except to the extent differing procedures are established by rule of court and meets the requirements of section 2421(d)(2)(B) of such title 28 (as so in effect)

(B) Determination as to prevailing party--

Any determination under subparagraph (A) as to whether a party is a prevailing party shall be made by agreement of the parties or--

(i) in the case where the final determination with respect to the tax, interest, or penalty is made at the administrative lever, by the Internal Revenue Service, or

(ii) in the case where such final determination is made by a court, the

court.

(5) Administrative proceedings--The term "administrative proceeding" means any procedure or other action before the Internal Revenue Service.

(6) Court proceedings--The term "court proceeding" means any civil action brought in a court of the United States (including the Tax Court and the United States Claims Court).

(7) Position of United States--The term "position of the united States" means--

(A) the position taken by the United States in a judicial proceeding to which subsection (a) applies, and

(B) the position taken in an administrative proceeding to which subsection (a) applies as the earlier of

(i) the date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of

Appeals, or

(ii) the date of the notice of deficiency.

(d) Special Rules for Payment of Costs--

(1) Reasonable administrative costs--An award for reasonable administrative costs shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

(2) Reasonable litigation costs--an award for reasonable litigation costs shall be payable in the case of the Tax Court in the same manner as such an award by a district court.

(d) Multiple Actions--For purposes of this section, in the case of--

(1) multiple actions which could have been joined or consolidated, or

(2) a case or cases involving a return or returns of the same taxpayer (including joint returns of married

individuals) which could have been joined in a single proceeding in the same court,

Such actions or cases shall be treated as 1 court proceeding regardless of whether such joinder or consolidation actually occurs, unless the court in which such action is brought determines, in its discretion, that it would be inappropriate to treat such actions or cases as joined or consolidated.

(f) Right of appeal--

(1) Court proceedings--an order granting or denying an award for reasonable litigation costs under subsection (a), in whole or in part, shall be incorporated as a part of the decision or judgment in the case and shall be subject to appeal in the same manner as the decision or judgment.

(2) Administrative proceedings--A decision granting or denying (in whole or in part) an award for reasonable

administrative costs under subsection (a) by the Internal Revenue Service shall be subject to appeal to the Tax Court under rules similar to the rules under section 7463 (without regard to the amount in dispute).

26 U.S.C. Sec. 7433

(a) In General--If, in connection with any collection of Federal tax with respect to a taxpayer, any officer or employee of the Internal Revenue Service recklessly or intentionally disregards any provision of this title, or any regulation promulgated under this title, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Except as provided in section 7432, such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

(b) Damages--In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of $100,000 or the sum of--

(1) actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional actions of the officer or employee, and

(2) the costs of the action.

(c) Payment Authority--Claims pursuant to this section shall be payable out of funds appropriated under section 1304 of title 31, United States Code.

(d) Limitations--

(1) Requirement that administrative remedies be exhausted--A judgment for damages shall not be awarded under subsection (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.

(2) Mitigation of damages--The amount of damages awarded under subsection (b)(1) shall be reduced by the amount of such damages which could have

reasonably been mitigated by the plaintiff.

(3) Period for bringing action--Notwithstanding any other provision of law, an action to enforce liability created under this section to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date the right of action accrues.

28 U.S.C. Sec. 2412

(a) Except as otherwise specifically provided by statute, a judgment for costs as enumerated in section 1920 of this title, but not including the fees and expenses of attorneys, may be awarded to the prevailing party in any civil action brought by or against the United States or any agency or any official of the united States acting in his or her official capacity in any court having jurisdiction of such action. A judgment for costs when taxed against the Untied States shall, in an amount established by statute, court rule, or order, be limited to reimbursing in whole or in part the prevailing party for the costs incurred by such party in the litigation.

(b) Unless expressly prohibited by statute, a court may award reasonable fees and expenses of attorneys, in addition to the costs which may be

awarded pursuant to subsection (a), to the prevailing party in any civil action brought by or against the United States or any agency or any official of the united states acting in his or her official capacity in any court having jurisdiction of such actin. The United States shall be liable for such fees and expenses to the same extent that any other party would be liable under the common law or under the terms of any statute which specifically provided for such an award.

* * * * * * * * *

(e) The provisons of this section shall not apply to any costs, fees, and other expenses in connection with any proceeding to which sectio 7430 of the Internal Revenue Code of 1954 applies (determined without regard to subsections (b) and (f) of such section). Nothing in the preceeding sentence shall prevent the

awarding under subsection (a) of section 2412 of title 28, United States Code, of costs enumerated in section 1920 of such title (as in effect on October 1, 1981).

42 U.S.C. Sec. 1983

Every person who, under color of any statute,. ordinance, regulation, custom, or usage, of any State or Territory or the District Of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any act of Congress applicable exclusively to the District Of Columbia shall be considered to be a Statute of the District of Columbia.

CERTIFICATE OF SERVICE

I, Nathan Boatner, am petitioner herein, appearing pro se. I hereby certify that on this day of I deposited in the United States Mail at Los Angeles, California, with first class postage prepaid, copies of the foregoing Petition For Certiorari--Civil Rights addressed as follows:

1 copy to: Solicitor General, Department Of Justice, Washington, DC, 20530

1 copy to: Gary A. Feess, Esq, United States Attorney, 300 N Los Angeles St, Rm 2315, Los Angeles, CA, 90012

4 copies to: Shirley D Peterson, Esq, Assistant AG, Tax Division, Department of Justice, PO Box 502, Washington, DC, 20044

I have read the foregoing and declare under penalty of perjury of the laws of the United States that the foregoing certificate is true and correct.

DATED: JAN 18 1991

Nathan Boatner, Pro Se
445 S Figueroa St, 26th Floor
Los Angeles, CA, 90071
(213) 489-6871

CERTIFICATE OF MAILING

I, Nathan Boatner, pro se, hereby certify that on this day of JAN 18 1991 I deposited 40 copies of the foregoing Petition For Certiorari--Civil Rights in the United States Mail with first class postage fully prepaid addressed to: Clerk, United States Supreme Court, 1 First Street, N.E., Washington, DC, 20543.

I hereby declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

DATED: JAN 18 1991

Nathan Boatner, Pro Se
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Los Angeles, CA, 90071
(213) 489-6871